a security does not arise because, as Mr. Das for the plaintiffs pointed out — and I am in agreement with his submission — they cannot be estopped from denying something the existence of which the other side is not in a position to prove. The question of denial and of their being estopped from denying does not arise at all.

Mr. Sharma submitted, in urging that this amendment should be allowed, that the question of the admissibility of evidence in support of the amendment does not arise at this stage, and should be dealt with later when it does arise. His submission was that at this stage the only question before the Court is whether the amendment should be allowed or not, and he cited a number of cases in which it had been held that any disadvantage accruing to the other side by reason of an amendment to the pleadings can generally be cured by an order for costs. But there is an abundance of authority for the proposition that in dealing with an application to amend the pleadings the Court should consider the materiality and the effectiveness of the amendment, and it is a well-established practice not to allow an amendment where it appears that such an amendment would be useless.

Taking the first of those propositions, Bowen L.J. in the case of *Lawrence* v. *Lord Norreys*[1] says:

> "No court ought to refuse leave to make such amendments (that was with reference to a later amendment alleging fraud) if it saw any reasonable prospect, or, I may say, reasonable probability, that a case could be made of fraud which would defeat the statute — that there was any substance in the case, that it was not simply fiction and imagination."

That passage goes to show that the Court should look at the probable consequences of the amendment, and it would appear to follow that if the amendment would be ineffectual then it ought not to be allowed to be made. That principle was followed in the case of *Morel Brothers & Co., Limited* v. *The Earl of Westmoreland*[2] as appears from the judgment of the Master of the Rolls where he refused an application to amend the pleadings on the ground that the plaintiffs would fail even if the amendment were allowed. And in *Wood* v. *The Earl of Durham*[3] where the plaintiff was a professional jockey suing for damages for libel charging him with unfairly and dishonestly riding the horses in a particular stable, the defendant pleaded a justification and afterwards applied to amend his defence by adding a paragraph alleging that at the time of the publication the plaintiff was commonly reputed to have been in the habit of unfairly and dishonestly riding horses in races, so as to prevent them from winning. It was held that as general evidence of the plaintiff's bad reputation (if admissible) could only be given in reduction of damages, and not in answer to the action, the paragraph did not contain a statement of material facts on which the defendant relied for his defence, within the meaning of Order XIX., r. 4, or a ground of defence which must be raised under Order XIX., r. 15, but was a denial or defence as to damages claimed or their amount, within the meaning of Order XXI., r. 4, and therefore ought not to be pleaded, and leave to amend must be refused.

In the case to which I have just referred, *Morel Brothers & Co., Limited* v. *The Earl of Westmoreland, supra,* the *ratio decidendi* of the point whether the amendment of the pleadings should be allowed or not was that the Court would not allow the addition of a claim which the plaintiffs had precluded themselves from making and, as I see it, the position is precisely the same if a party is precluded from setting up a certain plea by reason of the fact that he is not permitted by the law of evidence to give evidence in support of it; he should not be permitted to include that plea in his pleadings. Since I have ruled that the Defendant is precluded from giving any evidence of any arrangement between himself and the deceased, Naina, in respect of the Memorandum of Transfer in this case, I must accordingly dismiss the application to amend the defence.

Application dismissed.

Solicitors: *Das & Co.; N. Sharma.*

GURCHARAN KAUR v. ROCHI SILK STORE

[C.A. (Thomson C.J., Rigby and Ong JJ.)
January 21, 1959]

[K. L. — F.M. Civil Appeal No. 38 of 1958]

Landlord and Tenant — Demolition of building for purposes of rebuilding — "Intention" of owner — Building plans approved by local authority — Building scheme in accordance with Municipal Council's development plan — Scheme in public interests — Control of Rent Ordinance, 1956, s.12(1)(m).

Appeal — "Points of fact" and "points of law" — Control of Rent Ordinance, 1956, s. 11(1).

The landlord in this case was granted a certificate for the purposes of section 12(1)(m) of the Control of Rent Ordinance to the effect that the Rent Assessment Board was satisfied that she intended to demolish the premises in question for the purposes of rebuilding and that in its opinion it was in the public interest that she should be permitted to do so. The tenants appealed to the High Court against that decision of the Board and the appeal was allowed. The learned Judge in the course of his decision said that he thought he "ought to decide whether upon the record there was sufficient evidence" to justify the Board in concluding that such an intention was made out and concluded that "upon the facts of the present case as recorded and as deduced from the evidence I consider that this appeal must be allowed." On his own consideration of the evidence the learned Judge came to the conclusion that no intention of the necessary quality was made out. The landlord appealed to the Court of Appeal and her ground of appeal was that the original appeal to the High Court was on points of fact and not on any piont of law and therefore was one which the High Court was not competent to entertain by reason of section 11 of the Ordinance which only gives right of appeal on a point of law.

Held: (1) under section 11(1) of the Ordinance no appeal lies which is an appeal on a question of fact. In this case there was nothing on the face of what the Board had said in their certificate or in their grounds of judgment to show that they took an erroneous view of the law. Therefore the appeal to the High Court was

allowed not on a point of law but on a point of fact and as there was no error in law involved in their decision that the landlord intended to demolish the premises for the purposes of rebuilding, the order of the High Court must be set aside;

(2) it is not sufficient for the learned Judge to consider the Board was wrong. Before he was entitled to say that they erred in law he had to consider that their conclusion was an unreasonable inference from the primary facts that were proved in evidence for unless their conclusion was unreasonable his own conclusion was not the only reasonable one.

As to what is a point of law for the purposes of an appeal, *Edwards* v. *Bairstow* (2) approved.

On the question of whether the landlord intended to demolish the premises for the purposes of re-building, *Cunliffe* v. *Goodman* (1) approved.

Cases referred to:—

(1) *Cunliffe* v. *Goodman* [1950] 2 K.B. 237.

(2) *Edwards* v. *Bairstow* [1956] A.C. 14.

(3) *Bracegirdle* v. *Oxley* [1947] 1 K.B. 349, 358.

COURT OF APPEAL.

R. R. Chelliah for the appellant.

R. Ramani for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This is an appeal from a decision of the High Court setting aside a decision of the Rent Assessment Board for Kuala Lumpur.

The appellant, whom I shall call the landlord, is the owner of rent-controlled premises of which the respondents are the tenants. On 1st February, 1958, the Board granted the landlord a certificate for the purposes of section 12(1)(m) of the Control of Rent Ordinance, 1956, to the effect that the Board was satisfied that she intended to demolish the premises in question for the purposes of rebuilding and that in its opinion it was in the public interest that she should be permitted to do so. The certificate was subject to the condition that the landlord should obtain similar certificates in respect of adjoining premises owned by her.

The tenants appealed to the High Court against that decision of the Board and the appeal was allowed. The landlord has now appealed against the decision of the High Court and her ground of appeal is that the original appeal to the High Court was on points of fact and not on any point of law and therefore was one which the High Court was not competent to entertain by reason of section 11 of the Ordinance which only gives a right of appeal on a point of law.

In the original proceedings before the Rent Assessment Board the evidence given by and on behalf of the landlord was uncontradicted.

The landlord is the owner of premises at Nos: 71, 73 and 75 Batu Road, Kuala Lumpur, of which the respondents are the tenants of No: 71. The premises are what are known as shophouses, that is to say single storey buildings of which the lower portions are shops and the upper portions are normally residential and, although among the oldest buildings in Kuala Lumpur, are apparently structurally sound. Batu Road is a narrow busy thoroughfare in the heart of Kuala Lumpur which is as familiar to the Judges of this Court as is the western end of Fleet Street to Her Majesty's Judges in England. The landlord also owns a piece of land in another busy part of Kuala Lumpur about a mile from the Batu Road premises. Her husband owns a textile business managed by a son and owns 40 houses in Broadrick Road and Thamboosamy Road in the same part of Kuala Lumpur. The landlord's own property had been charged to a bank for about eighteen months to secure a running overdraft of $35,000 for the purposes of the husband's textile business but the husband's property is unencumbered.

The landlord and her son said that it was their intention to demolish the premises at 71, 73 and 75 Batu Road and replace them with a 7-storey building to be set back from Batu Road 20 feet further than the existing premises and that they had agreed to surrender this 20 feet to the Municipality for the purpose of road widening. In pursuance of this intention they had had prepared by a firm of architects a series of five plans including site and building plans (which were put in evidence), they had taken successful steps to have these approved by the Municipality and they had commenced proceedings similar to the present proceedings against the tenants of No. 73 and No. 75. The estimated cost of the scheme was about $350,000 and they were satisfied that they could easily raise this amount on the security of the property of the family.

The Town Planning Officer of the Kuala Lumpur Municipality said that the proposed building scheme was in accordance with the Municipal Council's development plan for the central area of the town which involved the widening of Batu Road by 20 feet. It was not the intention of the Council to enforce re-building in accordance with this plan immediately but a number of buildings had already been erected or were proposed to be erected in accordance with it and the re-building scheme proposed by the present appellant would be a step towards it. He also said it would provide increased office space in the town for which there was a demand. He concluded that it was for the public interest that the proposed new buildings be allowed to be built. "It would be better if the houses in this area which do not comply with approved town plan be demolished and rebuilt. The sooner it is the better."

No evidence was called on behalf of the tenants. The landlord's witnesses were rigorously cross-examined but there was not a word said in denial of her alleged intention to proceed with this scheme, of the alleged ability of the family to finance it, of the preparation of the plans which must have cost a great deal of money or of their approval or of the view of the Town Planning Officer that the scheme was in the public interest. In the circumstances it is

perhaps not surprising that the Board granted the certificate which was asked for.

When the matter came before the High Court the Judge followed the views of Asquith, L.J., in the case of *Cunliffe* v. *Goodman*[1], to which I shall return shortly, as to what constitutes intention. He then said that he thought he "ought to decide whether upon the record there was sufficient evidence" to justify the Board in concluding that such an intention was made out and concluded that "upon the facts of the present case as recorded and as deduced from the evidence I consider that this appeal must be allowed."

It is well settled law that apart from its powers *tanta et talia* to issue orders of *certiorari* and *mandamus* this Court has no jurisdiction to entertain appeals from any statutory tribunal unless such jurisdiction is expressly given to it by statute. Under the Control of Rent Ordinance the only right of appeal against a decision of a Rent Assessment Board is given by section 11(1) which provides that "an appeal shall lie on a point of law from any decision of the Board."

Taking the words of section 11(1) as the minor premiss of a syllogism of which the major premiss is that no appeals lie except appeals which are allowed by statute the conclusion is that no appeal lies which is an appeal on a question of fact. It is not necessary to discuss what is meant by saying that an appeal lies, for whatever that expression may mean it is a clear corollary to the proposition that no appeal lies on a question of fact to say that no appeal shall succeed on a point of fact. The question, therefore, which we have to decide here is whether the present appeal in the High Court did succeed on a point of fact for if it did so succeed then it ought not to have succeeded.

With regard to the question of whether in the present case the landlord intended to demolish the premises for the purpose of re-building I do not think it is necessary to discuss at any great length the authorities to which we were referred, for the question can be concluded in the light of the following passage in the judgment of Asquith L.J., in the case of *Cunliffe* v. *Goodman*, *supra*:—

> "The question to be answered is whether the defendant (on whom the onus lies) has proved that the plaintiff . . . . . 'intended' to pull down the premises on this site. This question is in my view one of fact. If the plaintiff did no more than entertain the idea of this demolition, if she got no further than to contemplate it as a (perhaps attractive) possibility, then one would have to say (and it matters not which way it is put) either that there was no evidence of a positive 'intention,' or that the word 'intention' was incapable as a matter of construction of applying to anything so tentative, and so indefinite. An 'intention' to my mind connotes a state of affairs which the party 'intending' . . . . . does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition."

I refrain from quoting the succeeding portion of the judgment for His Lordship clearly intended it to be taken as pleonastic rather than exegetical or hermeneutical.

There is here nothing on the face of the Board's certificate or in the grounds they have stated for granting it to show that they took a different view from that of Lord Asquith as to the meaning of "intention". In both these documents they confine themselves to following the words of the Ordinance and it must therefore be assumed that they interpreted the words of the Ordinance in the same way as a Court of Law would have done.

In the circumstances if the appellant wished to make out that the Board had erred in law he had to make out either that there was no evidence on which a tribunal directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the tribunal acted should not have led to that conclusion.

Here I would quote a passage from the speech of Lord Radcliffe in the case of *Edwards* v. *Bairstow*[2] in which the House of Lords was concerned with what is a point of law for the purposes of an appeal by way of case stated under the Income Tax Act, 1918. His Lordship said (at page 36):—

> "If the case contains anything *ex facie* which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test."

Much the same test as Lord Radcliffe's third test was propounded by Denning J. (as he then was) in the case of *Bracegirdle* v. *Oxley*[3] where he said (at page 358):—

> "The Court will only interfere if the conclusion cannot reasonably be drawn from the primary facts . . . ."

In the present case, as has been pointed out, there is nothing on the face of what the Board has said in their certificate or in their grounds of judgment to show that they took an erroneous view of the law. Can it be said, applying in turn each of Lord Radcliffe's tests, that there is no evidence to support their decision? or that the evidence is inconsistent with their decision? or that the only reasonable conclusion from the evidence contradicts their decision?

The evidence was that the landlord and her family wanted to rebuild, that they owned sufficient land to raise the necessary funds, that they had had Architect's plans prepared, that they had successfully taken steps to have these plans

approved by the Municipality and that they were actively prosecuting the legal proceedings necessary to overcome the initial obstacles imposed by the Control of Rent Ordinance. I would add that as a matter of commonsense it might be thought that a party owning land with a frontage to Batu Road had every incentive to make more profitable use of it than allowing it to be occupied by single-storied shophouses subject to the Control of Rent Ordinance.

On all that I do not think it could possibly be said that there was no evidence to support the view that the landlord had an intention to demolish and rebuild of the sort described by Asquith L.J., in *Cunliffe* v. *Goodman, supra* nor is it possible to detect anything which is contradictory of such a view.

I now apply Lord Radcliffe's third test in which the important word is the word "only."

It is true that Shepherd J., on his own consideration of the evidence came to the conclusion that no intention of the necessary quality was made out. What he said was:—

"I cannot but conclude that all that has occurred in this case is that the building owner has conceived a desire to demolish and rebuild; has taken that desire to the stage of contemplation and of preliminary investigation; but no further."

That may be a reasonable conclusion from the evidence and it is certainly a conclusion that is contradictory of the conclusion of the Rent Assessment Board. But to say that it is the only reasonable conclusion from the evidence is to say something very different. To say that it is the only reasonable conclusion is to say that any other conclusion is unreasonable.

It was not sufficient for the learned Judge to consider the Board was wrong. Before he was entitled to say that they had erred in law he had to consider that their conclusion was an unreasonable inference from the primary facts that were proved in evidence for unless their conclusion was unreasonable his own conclusion was not the only reasonable one. He did not go so far as to say that the Board's conclusion was unreasonable and on my own view of the evidence if he had gone so far he would have been wrong.

I am thus compelled to the results that the appeal to the High Court was allowed not on a point of law but on a point of fact and that there was no error in law involved in their decision that the landlord intended to demolish the premises for the purpose of rebuilding.

As regards the other part of the Board's decision, that demolition and rebuilding would be in the public interest, all I have to say is that whether that be a question of law or of fact it was proved beyond any question of reasonable doubt by the evidence of the Town Planning Officer.

I would allow the present appeal and set aside the order of the High Court setting aside the certificate of the President of the Rent Assessment Board. The appellant should have her costs before the Rent Assessment Board and in the High Court and the costs of the present appeal.

Rigby and **Ong JJ.** concurred.

Appeal allowed.

Solicitors: *R. R. Chelliah*; *Braddell & Ramani.*

MOKHTAR v. ARUMUGAM

[C. A. (Thomson C.J., Smith and Ong JJ.) February 11, 1959]

[K. L. — F.M. Civil Appeal No. 47 of 1958]

Practice and Procedure — Award of relief not prayed for — Prayer praying for "any other order as may deem fit and proper" — R.S.C. 1957, O.20 r.6.

Damages — Claim for damages must be distinctly pleaded.

A plaintiff cannot, under a general prayer for further relief, obtain any relief inconsistent with that relief which is expressly asked for.

If damages form part of the relief sought, they should be distinctly claimed.

Cases referred to:—

(1) *Cargill* v. *Bower* 10 Ch. D. 502.

(2) *London, Chatham & Dover Rly. Co.* v. *South Eastern Rly. Co.* [1892] 1 Ch. 120, C.A.

COURT OF APPEAL.

Mohamed Salleh bin Abbas (Federal Counsel) for the appellant.

K. L. Devaser for the respondent.

The facts appear sufficiently from the judgment of the Court delivered by,

Smith J.: This was an appeal by the defendant against the order of the trial Judge awarding $200 damages and taxed costs to the plaintiff. This written judgment elaborates the oral judgment which I delivered in Court.

The plaintiff was a gardener working at a house in Ceylon Lane. The defendant was at that time a police inspector attached to the Campbell Road Police Station. It was alleged that on 5th September, 1957, the defendant who had no search warrant had made an unlawful search of the plaintiff's house and taken away certain documents, viz. an I.O.U., a statement of accounts and some letters. The plaintiff also alleged that he had been manhandled and unnecessarily detained at the police station in connection with enquiries into an alleged offence under the Moneylenders Ordinance, 1951. The plaintiff alleged that he thereby suffered physically and mentally, that he was very nervous and apprehensive why he was questioned over and over again by the defendant and that he was ashamed and humiliated when the defendant and